

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**BERNARD R. CARDELLA, LORNE BROWN,
JOHN COLLINS, and DOMINICK OGBORN,
as Trustees of the International Association of Heat
and Frost Insulators, *et al.*,**

Plaintiffs,

vs.

**1:18-cv-447
(MAD/DEP)**

**EASTERN REGIONAL CONTRACTING, INC.,
and EDWARD J. SUTTON,**

Defendants.

APPEARANCES:

OF COUNSEL:

ROBERT S. CATAPANO-FRIEDMAN, P.C.
11 N. Pearl St., Suite 1609
Albany, New York 12207
Attorneys for Plaintiffs

**ROBERT S. CATAPANO-FRIEDMAN,
ESQ.**

Mae A. D'Agostino, U.S. District Judge:

DECISION AND ORDER

I. INTRODUCTION

On November 8, 2018, the Court entered a Memorandum-Decision and Order granting Plaintiffs' motion for default judgment as to liability, but directing that further supporting documents be filed with respect to damages. The Court now considers the issue of damages.

II. DISCUSSION

The parties are directed to the November 8, 2018 Memorandum-Decision and Order for the applicable law and background.

Plaintiffs offer the declaration of Kathy Hamm in support of their calculation of damages. *See* Dkt. No. 9-1. Kathy Hamm is the Fund Administrator for the captioned Funds whose job is

to receive and verify the calculation of contributing employers to the Funds and the captioned Union. *Id.* Ms. Hamm also calculates and bills contributing employers at the contract rate of 1.5% per month for interest and 10% per month for contract-specified penalties on past due contributions. *Id.* at ¶ 3. The amounts that Plaintiffs claim in damages for past due contributions and interest were calculated by Ms. Hamm in the ordinary course of her employment as Fund Administrator.

As of April 12, 2018, Defendants owed Plaintiffs \$12,194.96 in past due contributions, \$1,219.50 in contract penalties, \$182.92 in interest, and \$2,438.99 in liquidated damages (20% of the owed contributions per ERISA). *Id.* at ¶ 5. Under the prior settlement agreement provided to the Court, Defendants owe liquidated damages to Plaintiffs in the amount of \$14,176.50. *Id.* at ¶ 6. Plaintiffs further assert unpaid union dues in the amount of \$1,300.71. *Id.*

Further, according to Ms. Hamm, under a prior settlement agreement, Defendants owe Plaintiffs \$14,176.50 in liquidated damages for breach of the prior settlement agreement and, under the applicable CBA between Plaintiffs and Defendants, \$1,300.71 was owed to Plaintiff Union in past Union dues for February 2018 as of April 12, 2018. *See id.* at ¶ 6. From April 12, 2018 through May 16, 2018, Defendants became delinquent for March 2018 for \$14.36 in Industry Service Fund contributions, for \$15,415.46 in contributions to the other Plaintiff Funds, for Union dues of \$1,675.81, for \$3,083.09 in liquidated damages (20% of \$15,415.46), for additional interest of \$231.23, and for CBA penalties of \$1,541.55. *See id.* at ¶ 7. Ms. Hamm further indicates that on May 1, 2018, Defendants made a single payment in the amount of \$13,414.46 that was applied to principal owing in the amount of \$12,194.96 and penalties owing in the amount of \$1,219.50, leaving a balance owing as of May 16, 2018 of \$14.36 for delinquent contributions to the Industry Service Fund, \$15,415.46 for delinquent contributions to other

Funds, \$414.15 for accrued interest, penalties of \$1,541.55 under Articles 29 and 31 of the applicable CBA, \$2,438.99 in liquidated damages associated with the February 2018 contribution delinquencies, \$3,083.09 in liquidated damages associated with the March 2018 contribution delinquencies, plus \$14,176.50 of liquidated damages due for breach of the prior settlement agreement. *See id.* As such, as of the date of Ms. Hamm's declaration, the total past amount due and owing to Plaintiffs is \$37,084.10. *See id.*

Plaintiffs have now submitted an additional declaration by Ms. Hamm. In the same manner as the above calculations, Ms. Hamm has provided calculations for the periods of May 16, 2018 to June 7, 2018, from June 7, 2018 to July 11, 2018, from July 11, 2018 to August 9, 2018, from August 9, 2018 to September 5, 2018, from September 5, 2018 to October 17, 2018, and from October 17, 2018 to November 1, 2018, totaling \$63,480.78. On November 15, 2018, Defendants made a payment to Plaintiffs totaling \$23,614.11, reducing the current balance owed to Plaintiffs in this matter to \$39,866.67. *See* Dkt. No. 16. Plaintiffs have further provided an invoice for the requested \$78 for service. The Court finds these amounts to be adequately supported by the submitted evidence.

III. CONCLUSION

Accordingly, the Court hereby

ORDERS that Plaintiffs' Motion for Default Judgment is **GRANTED** as to damages in the amount of \$39,866.67; and the Court further

ORDERS that the Clerk of the Court serve a copy of this Memorandum-Decision and Order in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: December 19, 2018
Albany, New York


Mae A. D'Agostino
U.S. District Judge